

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 3671 of 2007()

ST.10/05 OF CJM, THODUPUZHA

PETITIONER: PETITIONER/ACCUSED

**M.M.RAJENDRAN, AGED 30, MULLAPPILLY
MADATHIL, MULANJOOR P.O., OTTAPPALAM,
PALAKKAD DISTRICT.**

BY ADV. SRI.GEO PAUL

RESPONDENTS: RESPONDENT/COMPLAINANT

**STATE OF KERALA, REPRESENTED BY
FOOD INSPECTOR, THODUPUZHA MUNICIPALITY
THROUGH BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R. BASANT, J.

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CrI.M.C. No. 3671 OF 2007 B
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Dated this the 14th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution under the Prevention of Food Adulteration Act. The matter came up for hearing on 20.11.07. Witnesses were present. The accused filed application for permission to exempt him from appearance and to permit the counsel to conduct on his behalf. The grievance before this court was that the said application has been dismissed without valid reason.

2. The report of the learned Magistrate was called for. The report of the learned Magistrate shows an entirely different story. The report shows that though such an application was filed, the counsel was not ready to go on with the trial and another application was filed seeking adjournment on the ground that the counsel was unable to come because of his illness.

3. The learned Magistrate has rejected the application and issued non-bailable warrant to the accused. Notice was issued to the sureties. According to the learned counsel for the

petitioner, the petitioner's absence was not willful. His absence was on account of reasons beyond his control and his counsel's absence was also because of reasons beyond his control.

4. The practice of the accused applying for exemption for personal appearance and permission to appear through counsel and thereafter counsel applying for adjournment of the case for cross-examination does not at all appear to me a correct procedure or practice.

5. The learned counsel for the petitioner submits that the report of the learned Magistrate reveals that the learned Magistrate has wrongly understood the application filed by the petitioner. The counsel has signed the application and written his name below his signature. That was wrongful to the learned Magistrate . I accept the submission of the learned counsel for the petitioner. On that aspect, the learned Magistrate may not be correct in conducting that the learned counsel for the petitioner handed over an application with a previous date and that paper was made use of to seek adjournment.

6. Be that as it may, I need only mention that the

petitioner must appear before the learned Magistrate and seek regular bail afresh. The learned Magistrate must consider such application on merits, in accordance with law, expeditiously – on the date of surrender itself. In the peculiar facts and circumstances of the case, there shall be a further direction that warrant of arrest issued against the petitioner shall not be executed before 17.12.07. On or before that date, the petitioner must appear before the learned Magistrate and seek regular bail. In the facts and circumstances of the case, the learned Magistrate must consider the prayer of the petitioner that the same sureties may be accepted to execute fresh bond sympathetically.

7. Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

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